

## Section 4: Implementation Tools and Techniques

Although rapid growth may appear as a threat to surrounding natural areas, the demand for new homes and businesses can in fact serve as a catalyst for the permanent preservation of critical lands. This section outlines how development rights may be clustered, transferred, or purchased from sensitive areas into areas where growth is less destructive to the environment.

Additionally, local governments can work in cooperation with state and federal agencies to identify resources and strategies, and address common threats in the county. Threats include invasive plant species that threaten the natural beauty and function of the region.

Recommendations for regular action to protect of critical lands and natural resources include the following:

1. Encourage communities to identify and consider all critical land categories as part of regular development review projects.
  - a. This can be done simply by exploring the new online mapping utility that is available to the public, including developers, land owners, and city/county staff
  - b. Adopt development review criteria that requires each critical land issue to be addressed for preliminary plan approval(s)
2. Obtain additional hazard data
  - a. Expand erosion hazard delineation
  - b. Identify funding sources to expand the Utah Geological Survey's hazard data near incorporated cities where growth is likely to occur
3. Work cooperatively with local, state, and federal government agencies to eradicate and prevent the spread of invasive plant species, including:
  - a. Cheat grass and other annual grasses
  - b. Tamerisk
  - c. Russian Olive
4. Purchase of Development Rights
  - Funding Sources
    - (Real Estate Transaction Fee)
    - (Quality Growth Commission Fund Descriptions)
    - Federal – NRCS
5. Work cooperatively with SITLA and BLM to implement land exchanges to enable preservation of environmentally sensitive state trust lands.



## ***Section 4.1 - Strategic Development Codes to Preserve Corridors and Open Space***

This toolkit section provides a variety of planning and zoning strategies to help communities plan, design, implement, and fund preservation of sensitive lands. This information is outlined as a resource for each jurisdiction to consider and choose the most appropriate course of action for a specific project or general policy. Communities may wish to develop some of these strategies into their general plans, development ordinances, or resolutions of support.

Preservation tools, or development codes covered in this section allow communities and developers to create livable neighborhoods while preserving critical open space areas or corridors for trail easement, recreation, or land conservation. The following tools and techniques are described:

- Planned Unit Development Agreements
- Cluster Development
- Conservation Easements
- Private HOA/Public Agreements
- Transfer of Development Rights (TDR)
- River Setback Requirement

Open space requirements or incentives in a community's development code can be a method of preserving critical lands without spending public dollars for preservation. However, the level of preservation and future maintenance of the open space must be considered as the development code regulations are created.

Key considerations when defining preservation as part of new development include 1) Whether the open space should remain in a natural condition, or if it should be converted to recreational use, or remain as agricultural, and 2) The ownership of the property, and the ongoing maintenance responsibility.

A local government can require open space as part of a development, but cannot require a developer to create public access to the open space, or prevent subdivision residents access to a sensitive area, or create a public trail corridor as part of the development without offering some additional incentives in the development agreement. This is based on case law that protects a developer from being required to provide new amenities for residents other than those that will live in the proposed development. Some services such as water delivery, sewer, arterial roads, and parks may require impact fees to reimburse the public for provision of these external services to the developer.

Preserved open space intended for the benefit of the whole community should not be confused with private open space created exclusively for residents of a development's home owners association. Rather than requiring private open space in a proposed development (which tends to be recreational), a local government may negotiate with a developer to encourage a sensitive area with limited public access that is deeded to the city or county for public protection. The following zoning techniques provide developers

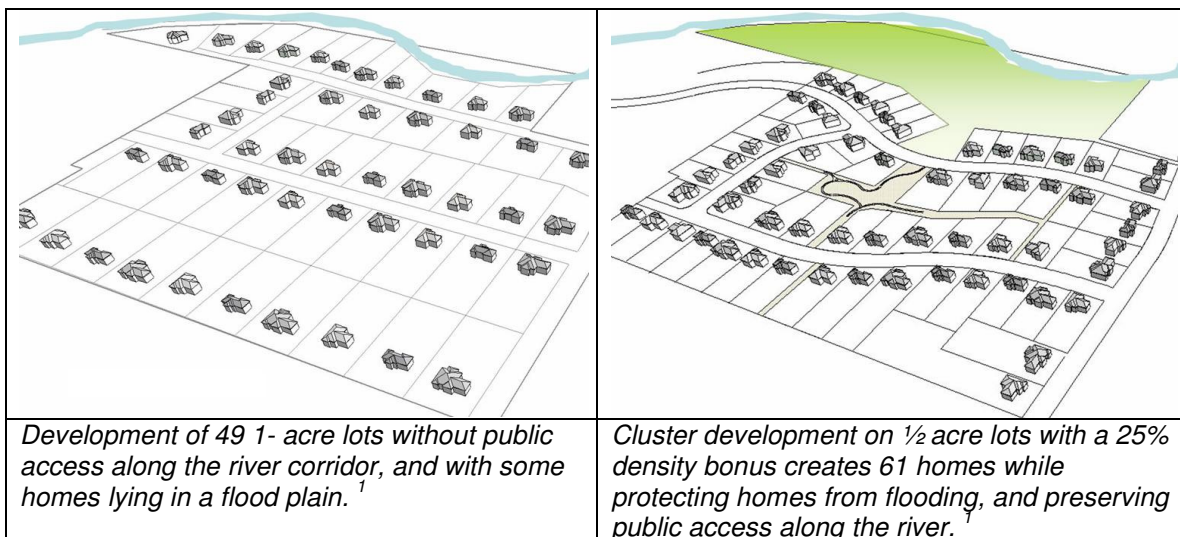
with the option to develop without open space (with fewer dwelling units per acre), or to pursue a greater number of dwelling units per acre in exchange for the provision of public trail or open space amenities.

***Planned Unit Development Agreement:***

A PUD may encourage open space that is owned and maintained by a local government, or by a home owners association (HOA). The HOA may establish covenants to protect sensitive areas, with a plan to provide ongoing maintenance of the property. Public open space intended for community-wide use should be owned and maintained by the local government, whereas club houses and grounds intended for the development only should be owned and maintained by the HOA.

***Cluster Development:***

Similar to a planned unit development, cluster development provides an additional option or incentive to existing zoning, and can be used to create incentives for natural areas, parkways, or other types of open space. Cluster Development allows for significant reduction in lot size to preserve a remaining open space area. Smaller lot sizes with reduced frontage widths tend to reduce the street related infrastructure costs, including roads, sidewalks, sewer, and water lines. Additional incentive can be created by offering more dwelling units through a density bonus (such as 10 percent or more) if the clustering option is pursued. Cluster development is an effective tool for preserving an open space edge of a development as a less restrictive method for preserving floodways, parkways, or the base of slopes where potential rock fall or land slide areas present a hazard.




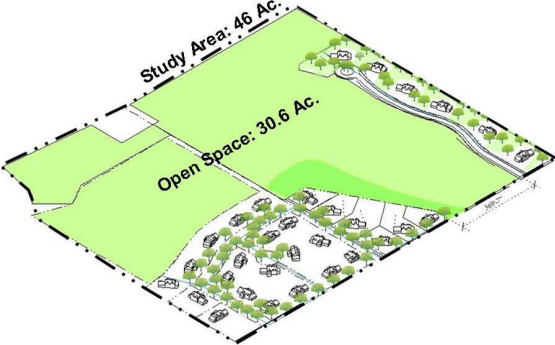
In contrast to a PUD ordinance, cluster development usually places less emphasis on full public ownership, maintenance and access to the open space. A public trail easement can still be provided next to preserved open space that allows “visual access,” as opposed to physical access to the open space. Cluster development ordinances may vary in density, and vary in the percentage of land that is encouraged for preservation. As such, cluster development can apply to both rural or urban settings. A number of



cluster development ordinances are active in Utah communities, including Marriot Slaterville, Wellsville, Farmington, Hooper, Weber County, and Cache County.

### Clustering in Rural Areas

Cluster development can be used to preserve sensitive lands or agricultural lands. In rural communities, a lower base density (or by-right density such as 1 unit per acre, or 1 unit per 5 acres) can encourage a large amount of land preservation if significantly smaller lots are encouraged while maintaining a similar base density. The reduced infrastructure quantities and associated costs associated with clustering will benefit not only the developer, but also the local government providing road maintenance and other services.

	
<p>A 1.25 acre minimum lot size zoning yields 30 lots and 4,118 feet of road length.</p>	<p>Cluster development reduces the average lot size to 0.44 acres, and reduces the total road length to 2,650 feet. Smaller lots reduce the water required for landscaping by one third, allowing water rights to be used for farmland or pasture preservation. Reduced road mileage reduces maintenance costs to the city for the same number of homes. Smaller lots may require septic drainage into surrounding open space area or design of group septic systems.</p>

### Securing Open Space Maintenance and Protection

How can a community assure that preserved open space areas remain protected into perpetuity? Several methods may be required to prevent the possibility of a future land owner or legislative body from backing out of a contract to protect an area from development.

A **conservation easement** is a legal document that allows a second party to restrict development of property held by a primary party. A conservation easement may also include a third party that holds enforcement rights to the conservation easement. For example, a city might hold a conservation easement to a private land parcel, and a local land trust might hold the enforcement rights to assure that future city officials do not attempt to relinquish their ownership of the conservation easement. In Utah, a

conservation easement may only be held or enforced by a private non-profit land trust or any government entity, whether it be federal, state, local, or a special service district.

A land trust organization may not be interested in holding and easement on all open space projects preserved through cluster development, or through transfer of development rights (see the following section). Land trusts seek to protect land with significant value for the purpose of their organization, such as wildlife habitat, water quality or agricultural preservation.

### ***Private HOA and Public Development Agreements***

Development approval of a planned unit development or cluster subdivision may include the formation of a homeowner's association (HOA) that owns and maintains the open space areas. The HOA is a private body comprised of residents in a specific development that collectively own open space or other amenities in a development. The body is established by the developer who seeks approval from a local government during the development permitting process. An HOA's responsibilities are established through the development of codes, covenants and restrictions that guide the on-going care of the common amenities. Such codes typically require a monthly fee to maintain common areas, including open space.

Unfortunately, it is not uncommon to hear mention of an HOA who's ability to enforce codes and monthly fees has disintegrated over time, and the amenities have become neglected and unsightly. This could be tragic for a cluster subdivision where preserved open space, pasture or farmland is not properly maintained, and becomes an unsightly patch of weeds.

### ***Public Enforcement Rights***

Through some trial and error, communities have learned to establish safeguards as part of the HOA approval process. For example, Midway City requires the following language to be included in the Codes, Covenants and Restrictions for Planned Unit Developments in Midway, Utah.

"Midway City shall have the right, but not the duty, to require, and if necessary, perform, at the Association's expense, landscaping, maintenance, and snow removal within the common areas if the Association fails adequately to perform such. In the event Midway City exercises this right, the City shall be entitled to recover any associated costs and attorney fees. This section shall not be amended or deleted without the approval of Midway City."

Another example from South Jordan City further states that the "City has the right, but not the duty to form, under State statutes, a Special Service District (SSD) for the purpose of ongoing maintenance or a Special Improvement District (SID) for the purpose of making needed improvements within the project. The City may take this action when either asked to take over improvements or maintenance tasks by the Home Owners Association, or by an owner. The City Council may also take one or both of these actions when it determines the need based on a historical pattern of a lack of care and maintenance.

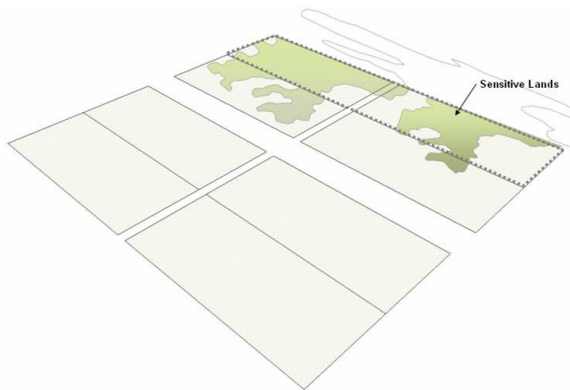


### **HOA and Public Preservation Safeguards**

As an added measure of protection, a conservation easement could be held by a local government on private open space owned and maintained by an HOA. To prevent a future elected community council from relinquishing the easement and encouraging development of the open space, the codes, covenants and restrictions should require that a majority or unanimous vote of residents in the HOA approve of the open space conversion. This dual protection of HOA and elected official vote assures that preserved open space is both desired, and protected in the long term.

### ***Transfer of Development Rights (TDR):***

A transfer of development rights program may be adopted by a community to allow developers the option of purchasing additional development rights from other land owners. Additional development rights would allow a developer to increase the number of dwelling units in a proposed development while preserving sensitive lands elsewhere in the community.



*Image a. Vacant land with sensitive land areas shown in the background.*



*Image b. Typical growth pattern with suburbs in foreground and low density development occurring on sensitive lands.*



*Image c. TDR application including more compact development in foreground, suburbs and lower density growth in the mid ground, and preserved sensitive lands in the background. <sup>1</sup>*

A TDR program establishes areas where increased density would be appropriate (receiving zones), and areas desired for preservation (sending zones). Land owners in sending zones may choose to sell their development rights to developers if they agree to a conservation easement that would restrict future development on their property. A TDR tends to equalize land values as opposed to zoning some land as open space or





low density agriculture (lower value zoning), and other areas as low, medium or high density single family, multi-family, or commercial zoning (higher value zoning). The transfer (or sale) of development rights helps to preserve strategic sensitive land areas that might otherwise be disrupted through a partial preservation achieved with cluster development. Target preservation goals for TDR might include sensitive mountain bench areas, water shed protection, floodplains, mixed wetland and upland areas, riparian corridors, and agland.



*Mapleton City's TDR program has been successful in preserving much of the privately owned upper bench area next to U.S. Forest Service land. This will help to reduce service costs in the community, preserve critical winter deer habitat, and allow for development of the Bonneville Shoreline Trail.<sup>2</sup>*

***River Buffer or Setback (Applied to Commercial, Multi-family, or Mixed Use Development:***

*(See Appendix)*

A minimum development setback along sensitive rivers, streams or wetlands can help to create an open space buffer, including a trail easement, while protecting water quality, and enhancing wildlife habitat. Increasing the distance between buildings or parking surfaces from a river edge helps to reduce storm water runoff into the river that can carry pollutants from vehicles. Storm water should be diverted away from rivers and detained.

Additionally, a native vegetation requirement along river edges can protect water quality and enhance the natural aesthetic and habitat value by creating vegetative cover and by reducing lawn fertilizers that may pollute the water.